

In the Matter of License No. 215619 and Appellant's Seaman's Document No.

Issued to: RALPH R. BAILEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1177

RALPH R. BAILEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 23 September 1959, an Examiner of the United States Coast Guard at Boston, Massachusetts suspended Appellant's seaman documents upon finding him guilty of misconduct and negligence. The two specifications found proved allege that while serving as Master on board the United States SS S.T KIDDOO under authority of the license above described, on or about 16 August 1959, Appellant navigated at an excessive speed in fog (negligence); Appellant departed on a coastwise voyage from Portland, Maine to Calais, Maine knowing that the vessel was not manned as required by her Certificate of Inspection for a coastwise voyage (misconduct).

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charges and each specification. The Investigating Officer introduced in evidence the testimony of four witnesses, a copy of the ship's Certificate of Inspection and a portion of a chart showing the approaches to the harbor of Portland through Casco Bay. No evidence was submitted on behalf of the Appellant.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charges and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of two months on twelve months' probation.

On 16 August 1959, Appellant was serving as Master on board the United States SS S.T. KIDDOO, a tankship of 613 gross tons, and acting under authority of his License No. 215619 while the ship was on a coastwise voyage from Portland, Maine to Calais, Maine, a distance of approximately 200 miles.

The crew consisted of:

- 1 Chief Mate (and First Class Pilot)
- 1 Chief Engineer
- 1 Assistant Engineer
- 3 Able seamen
- 1 Cook

It is assumed that the Assistant Engineer was licensed as a First Assistant for vessels of this category.

The Certificate of Inspection issued for the KIDDOO designates her as a "coastwise" vessel and requires the following manning except when operating on "inland waters" or for not more than twelve hours of any twenty-four hour period:

1 Master and Pilot	3 Able seamen	1 Chief Engineer	
1 Chief Mate	1 Ordinary seaman	1 First	Assista n t Engine er
1 Second Mate	1 Second Assistant Engineer		

After departing from Portland on 16 August, the KIDDOO was underway on Casco Bay with Appellant at the conn. Shortly after 0700, the ship was on course 081 degrees true when dense fog limited visibility to about 100 feet. Since the distance from the pilothouse to the stem was also approximately 100 feet, the visibility from the pilothouse to beyond the forward part of the ship was zero. At this time, fog signals were being sounded and Appellant ordered the engines stopped. A minute or two later, he ordered the engines slow ahead. This was between five and ten minutes before the ship collided with the sailing yacht MACCOBOY about 0715. There was no subsequent change of course or speed ordered before the accident. The record does not define the vessel's slow ahead speed but her maximum speed was eight knots. The bow lookout of the KIDDOO was on his way to the pilothouse to relieve the helmsman at the time of the collision. The record does not disclose that the approaching yacht was seen from the KIDDOO or that her fog signals were heard by Appellant or the helmsman.

The MACCOBOY was in a sailing race proceeding on a course of 274 degrees true, speed about six knots, with the owner at the helm and two lookouts posted. She was sounding fog signals in visibility limited to less than 200 feet. The fog signals of the KIDDOO were heard before she was sighted at a distance of less than 150 feet. This was a few seconds before the MACCOBOY struck the starboard side of the KIDDOO at a slight angle and each vessel bumped down the starboard side of the other until they were clear. The collision was a minor one with no injuries to personnel. Neither vessel was substantially damaged. The MACCOBOY proceeded to Portland under power.

The KIDDOO continued up the coast on her voyage to Calais, arrived there and then returned to Portland on 20 August. During the course of the voyage, the KIDDOO was compelled to go outside the lines, dividing the high seas from inland waters, because these lines touch the mainland at two places between Portland and Calais. There was no change in personnel during the course of this voyage.

Appellant has no prior record during his forty years of service on merchant vessels of the United States.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner's finding that the KIDDOO was making approximately seven knots shortly before the collision is erroneous because it is based on the unreliable testimony of three witnesses. The two sailing yacht witnesses were not in a position to estimate the speed of a vessel heading toward the yacht. The seven-knot estimate by the helmsman of the KIDDOO, an able seaman, is not reliable because of his testimony that the vessel's maximum speed was eight knots and that Appellant had ordered slow ahead between five and ten minutes before the collision.

The misconduct specification was not proved because the vessel was on inland waters when she departed from Portland, on 16 August, and she was manned as required by her Certificate of Inspection when on "inland waters."

It is inequitable to suspend Appellant's license while the owner and navigator of the MACCOBOY is in a position of complete immunity from proceed-

The charges are erroneous and should be dismissed. In any event, the order imposed is excessive in view of Appellant's perfect record for 40 years.

APPEARANCE: Foley and Martin of New York City, by John H. Hanrahan, Esquire,
of Counsel.

OPINION

It is my opinion that there is substantial evidence to support the allegations of both specifications and that the order imposed was justified because of the seriousness of these two offenses.

With respect to the alleged excessive speed in fog, the Examiner's finding that the KIDDOO was making seven knots at the time of the collision has been modified to finding that she was proceeding at the undetermined speed of "slow ahead." This is the most favorable evidence to Appellant that is contained in the testimony of the helmsman which is somewhat self-contradictory as to the approximate speed of the ship at this time. Despite this inconsistency, his testimony should prevail over that of the two yachtmen who had only a matter of seconds in which to estimate the speed of a vessel which was practically on top of them.

On the other hand, the helmsman's testimony was quite definite that he could not see beyond the forecastle head, a hundred feet away, due to the extremely dense fog. The lookout had left the

bow to relieve the helmsman. Hence, it is obvious that the KIDDOO could not have stopped within her share of the distance of visibility, regardless of what specific or general test is applied to determine this, because of effective range of visibility ahead was zero. Whatever the forward motion of the KIDDOO was at the time of the collision, her speed was excessive to that extent. The dangerous nature of this situation is obvious. Appellant made no attempt to refute the evidence on which these findings and conclusions are based.

The misconduct specification alleges that Appellant departed from Portland for Calais knowing that his vessel was not properly manned for the 200 mile coastwise voyage. (A "coastwise" tank vessel normally navigates the waters of an ocean or the Gulf of Mexico 20 nautical miles or less offshore. 46 CFR 30.10-11) Due to the lack of evidence in the record, the Examiner properly took official notice of the geographical fact as to the distance between Portland and Calais and of the location of the dividing lines, between the high seas and inland waters, in relation to the coast of Maine. The contents of the Code of Federal Regulations, wherein the location of these lines is defined pursuant to 33 U. S. Code 151, may be judicially noticed. 44 U. S. Code 307, 311(e). Therefore, such matter may be officially noticed in administrative proceedings.

The "inland waters" exceptions to the manning requirements set forth above from the KIDDOO's Certificate of Inspection did not apply to this voyage. It is absolutely necessary to go outside the dividing lines in two places because of the two points where these lines touch the mainland. By no definition can "inland waters" be considered to include open waters of the Atlantic Ocean particularly when these waters are outside of the lines of demarcation. Hence, this voyage could not have been limited to "inland waters." It is presumed that Appellant, as a professionally competent Master and Pilot, knew these facts when he departed from Portland. He made no attempt to rebut this presumption.

The other exception to the manning requirements, when not operating in excess of twelve hours out of twenty-four, does not apply. The distance between Portland and Calais is about 200 miles and the maximum speed of the KIDDOO was eight knots. The trip would then take a minimum of approximately 25 hours. The evidence indicates that the ship went "point to point" from Portland to Calais. The natural conclusion from this and the fact that she is a "coastwise" vessel (see 46 CFR 30.11-10, *supra*) is that the ship was navigating primarily on the ocean in the normal manner for such a voyage. Hence, she did not stop twelve hours after each period that she was underway for twelve hours or less. Appellant did not submit any evidence to support the latter possibility.

For these reasons, I conclude that the KIDDOO left Portland undermanned to the extent of a Second Mate, a Second Assistant Engineer, and an ordinary seaman. This shortage of personnel created an unsafe condition. I agree with the Examiner that an un rebutted *prima facie* case was made out that Appellant knew this condition existed upon departure on a coastwise voyage to Calais. This is the offense alleged by the misconduct specification. Consequently, although a liberal construction of specifications is permissible in these remedial proceedings, it is not necessary in this case.

No action such as this can be instituted against the owner of the MACCABOY because he

has no license issued by the Coast Guard.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 23 September 1959, is
AFFIRMED.

J.A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 24th day of June 1960.